

9-111.000 FORFEITURE/SEIZURE

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9-111.110 Seizure -- General Pre-Seizure Planning Policy Guidelines

What follows are broad pre-seizure planning policy guidelines for all agencies participating in the Asset Forfeiture Program. Minor variations and exceptions to the mandatory aspects of these guidelines are permitted only with the explicit approval of the Asset Forfeiture and Money Laundering Section.

The United States Attorney, or in administrative forfeiture cases, the agent in charge of a field office, is responsible for ensuring that proper and timely pre-seizure planning occurs in the appropriate asset forfeiture cases within that federal judicial district. All pre-seizure planning meetings will include, at a minimum, as applicable, the Assistant United States Attorney or investigative agent in charge of the forfeiture matter (and, if applicable, the Assistant United States Attorney in charge of the related criminal matter), investigative agents, and the appropriate United States Marshals Service representative (which should include a representative from the district where the property is to be seized if different than the district where the action is to be filed). A federal regulatory agency representative will also attend in FIRREA forfeiture cases.

For asset forfeiture cases involving more than one federal judicial district, the United States Attorney instituting the forfeiture action has the primary responsibility to ensure that all Asset Forfeiture Program participants are notified, and that proper and timely pre-seizure planning occurs in those districts where assets will be seized as a result of that asset forfeiture matter.

Further information on this topic is available in the Criminal Resource Manual

Pre-Seizure Planning	Criminal Resource Manual at 2201
Scope of Assets Covered by Pre-seizure Planning Guidelines	Criminal Resource Manual at 2202
Pre-seizure Planning Defined	Criminal Resource Manual at 2203
Planning Checklists	Criminal Resource Manual at 2204

9-111.120 Net Equity Values

Whether a property should be seized must be documented during the pre-seizure process. These guidelines set minimum net equity levels that generally must be met before federal forfeiture actions are instituted. The net equity values are intended to decrease the number of federal seizures, thereby enhancing efforts to improve case quality and to expedite processing of the cases we do initiate. The thresholds are also intended to encourage state and local law enforcement agencies to use state forfeiture laws. These thresholds are to be applied in adoptive cases. In general, the minimum net equity requirements are:

- Real Property -- net equity must be at least 20 percent of the appraised value, or \$20,000, whichever is greater. As a general rule, the Department of Justice does not seize or adopt contaminated real properties. *See Contaminated Real Property Policy*, at 9-111.400.
- Vehicles -- net equity must be at least \$5,000. However, if the person from whom the vehicle was taken was or is being criminally prosecuted by state or federal authorities for criminal activities related to the property and there is justification for a downward departure, such as the vehicle being used to facilitate criminal activities, the minimum net equity is \$1,000. (The arrest of the person from whom the property is taken, for an offense related to the illegal use or acquisition of the property for which a forfeiture action may be brought, satisfies the condition of criminal prosecution.) This restriction does not apply in the case of seizures by the Immigration and Naturalization Service of vehicles used in the smuggling of aliens or in the case of vehicles modified or customized to facilitate illegal activity.
- Cash - amount must be at least \$5,000, unless the person from whom the cash was taken was criminally prosecuted or is being prosecuted by state or federal authorities for criminal activities related to the property, in which case, the amount must be at least \$1,000.
- Aircraft -- net equity must be at least \$10,000.
- Vessels -- net equity must be at least \$10,000.
- All Other Personal Property -- net equity must be at least \$5,000 in the aggregate. Downward departures should not be made for any individual item if it has a value of less than \$1,000.

Exceptions can be made if: (a) the seizure will have a substantial law enforcement effect, e.g., a computer is seized to disrupt a major fraud scheme; or (b) practical considerations support the seizure, e.g., 20 items of jewelry, each valued at \$500, might be seized as the total value of the items is \$10,000 and the cost of storing 20 small items of jewelry is not excessive.

Heads of investigative agencies may continue to establish higher thresholds for seizures made by their agencies. If an investigative agency head establishes higher monetary thresholds than those set out in the directive, the Asset Forfeiture and Money Laundering Section shall be advised in writing of the change.

Each United States Attorney may institute higher district-wide thresholds for judicial forfeiture cases. In doing so, United States Attorneys should confer with the seizing agencies affected by the change and develop in concert with those agencies written district-wide guidelines for implementation. Written notice of such higher thresholds shall be provided to the Asset Forfeiture and Money Laundering Section. Any threshold higher than those identified in the directive shall not be the basis for failing to assist in seizing property when requested to do so by another district with lower monetary thresholds where the requesting district intends to file the judicial action.

It is understood that in some circumstances the overriding law enforcement benefit will require the seizure of an asset that does not meet these criteria. In individual cases, these thresholds may be waived where forfeiture will serve a compelling law enforcement interest, e.g., forfeiture of a "crack house," or of a conveyance with hidden compartments. Any downward departure from the above thresholds must be approved in writing by a supervisory-level official and an explanation of the reason for the departure noted in the case file.

9-111.123 Avoiding Liability Seizures

When real property and businesses are targeted for asset forfeiture, the potential net equity must be calculated. *See* the Criminal Resource Manual at 2205. If the financial analysis indicates that the aggregate of all liens (including judgment liens), mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, the United States Attorney will either determine not to go forward with the seizure (*see* Alternatives to Seizure, the Criminal Resource Manual at 2209, or acknowledge the potential financial loss and document the circumstances that warrant the continuation of the seizure and institution of the forfeiture action.

In cases where the integrity of the investigation could be compromised resulting in a seizure without any pre-seizure planning, the seizing agency shall be responsible for custody and maintenance of the property until the United States Marshals Service has had an opportunity to respond. The Marshals Service shall complete a pre-seizure checklist and financial analysis worksheet within 5 business days of the seizure. If the financial assessment indicates that the aggregate of all liens, mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, the United States Attorney will either take action to dismiss the forfeiture action, and to void any expedited settlement agreements (if any have been entered into), or acknowledge the potential loss and document the circumstances that warrant the continuation of the forfeiture action.

In making decisions whether and how to proceed with the seizure and forfeiture of assets identified during the pre-seizure phase in judicial forfeitures, the United States Attorney or his or her designee, in consultation with the seizing agency and the United States Marshals Service, and in administrative forfeitures, the agent in charge of the field office responsible for the administrative forfeiture, or his or her designee, in consultation with the Marshals Service, shall evaluate and consider the forfeitable net equity and the law enforcement purposes to be served in light of the potential problems and estimated costs of post-seizure management and disposition.

9-111.124 Business Seizures

Due to the complexities of seizing an ongoing business and the potential for substantial losses from such a seizure, a United States Attorney's Office shall obtain the concurrence of the Asset Forfeiture and Money Laundering Section prior to initiating a forfeiture action against, or seeking a temporary restraining order affecting, an ongoing business. *See* the Criminal Resource Manual at 2206 and 2207.

9-111.130 Pre-Indictment and Other Forfeiture Coordination

In criminal forfeitures, the United States Attorney will ensure proper and timely pre-indictment coordination with the United States Marshals Service to prepare for and assess the property management and financial needs of those assets subject to criminal forfeiture. The United States Attorney should consult with the United States Marshals Service prior to the submission of any proposed orders to a court that impose any restraint, seizure, property management, or financial management requirements relating to any property that is or will be in the Marshals Service's custody.

Further guidance on pre-seizure activity is available in the Criminal Resource Manual

Use of Seizure Warrants on Real Property Notification	Criminal Resource Manual at 2208
Notification By Seizing Agency	Criminal Resource Manual at 2210
Pre-Seizure Judicial Review	Criminal Resource Manual at 2211
Forms of Process To Be Used	Criminal Resource Manual at 2212
Responsibility for Execution of Process	Criminal Resource Manual at 2213

Real Property Seizures	Criminal Resource Manual at 2215
Posting Real Property Without Taking Actual Custody and Control (Continued Occupancy)	Criminal Resource Manual at 2216
Notice and an Opportunity for a Pre-seizure Hearing	Criminal Resource Manual at 2217
Seizure Upon Exigent Circumstances Without Notice and an Opportunity for a Pre-Seizure Hearing (Possible Removal of Occupants).	Criminal Resource Manual at 2218
Retroactivity of Good	Criminal Resource Manual at 2219

9-111.150 Dispute Resolution

In instances where a dispute concerning whether or not certain property should be seized for forfeiture cannot be settled between the concerned agencies or other components, alternatives to seizure should be utilized until the issue is resolved. Dispute resolution may be sought from the Asset Forfeiture and Money Laundering Section. Timely resolution of disputes is critical.

9-111.250 Obtaining Criminal Forfeiture Seizure Warrants for Property Located Outside Districts

A seizure warrant for property subject to criminal forfeiture may be issued in the district where the property is located, or it may be issued by the court in the district where the criminal indictment is pending. *See* the Criminal Resource Manual at 2214.

9-111.400 Contaminated Real Property Policy

This policy envisions United States Attorneys exercising discretion in the seizure and forfeiture of real property that is contaminated or potentially contaminated with hazardous substances. Normally, such properties should not be forfeited unless there is at least \$30,000 in net equity belonging to the defendant. **Furthermore, such properties should not be forfeited when there is reason to believe the property is substantially contaminated with hazardous substances and that such contamination would render the property unmarketable.** Clean-up costs can be considerable, particularly when the water table is involved. In making this determination, the USA may order an environmental assessment that will be paid from the Assets Forfeiture Fund. (The Chief, Environmental Quality Section, Tulsa District, U.S. Army Corps of Engineers, (918) 581-7877, has agreed to conduct environmental assessments for the Department on a cost basis.) *See* the Criminal Resource Manual at 2220.

9-111.600 Seized Cash Management

The Attorney General has established the following policy on the handling of seized cash:

Seized cash, except where it is to be used as evidence, is to be deposited promptly in the Seized Asset Deposit Fund pending forfeiture. The Chief, Asset Forfeiture and Money Laundering Section, may grant exceptions to this policy in extraordinary circumstances. Transfer of cash to the United States Marshal should occur within 60 days of seizure or 10 days of indictment.

Paragraph (VII (1), *Attorney General's Guidelines on Seized and Forfeited Property*, July 1990.) This policy applies to all cash seized for purposes of forfeiture. Therefore, all currency seized that is subject to criminal forfeiture or to civil forfeiture, must be delivered to the United States Marshals Service (USMS) for deposit in

the USMS Seized Asset Deposit Fund either within 60 days after seizure or 10 days after indictment, whichever occurs first. (This policy does not apply to the recovery of buy money advanced from appropriated funds. To the extent practical, negotiable instruments and foreign currency should be converted and deposited.) Where appropriate, photographs or videotapes of the seized cash should be taken for later use in court as evidence.

If the amount of seized cash to be retained for evidentiary purposes is less than \$5000, permission need not be sought from the Asset Forfeiture and Money Laundering Section for an exception, but any exception granted must be granted at a supervisory level within a United States Attorney's Office using the aforementioned criteria. (The criteria and procedure for obtaining exemptions remains the same for cash retained by Customs.)

If the amount of seized cash to be retained for evidentiary purposes is \$5000 or greater, the request for an exemption must be forwarded to the Asset Forfeiture and Money Laundering Section. Requests for an exemption should be filed by the United States Attorney's Office or Criminal Division Section responsible for prosecuting, or reviewing for prosecution, a particular case. The request should include a brief statement of the factors warranting its retention and the name, position, and phone number of the individual to contact regarding the request.

Limited exceptions to this directive, including extensions of applicable time limits, will be granted, on an interim basis, only with the express written permission of the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division. Retention of currency will be permitted when retention of that currency, or a portion thereof, serves a significant independent, tangible, evidentiary purpose due to, for example, the presence of fingerprints, packaging in an incriminating fashion, or the existence of a traceable amount of narcotic residue on the bills. Avoidance of the effect of a court order is *not* a significant evidentiary purpose. If only a portion of the seized cash has evidentiary value, only that portion with evidentiary value should be retained. The balance should be deposited in accordance with Department policy. *See* the Criminal Resource Manual at 2228. See also:

Seizure of Postal Money Orders

Criminal Resource Manual at 2221

Seizure of Personal or Cashiers' Checks

Criminal Resource Manual at 2222

Seizure of Certificates of Deposit

Criminal Resource Manual at 2223

Seizure of Travelers' Checks

Criminal Resource Manual at 2224

Seizure of Stocks and Bonds

Criminal Resource Manual at 2225

Seizure of U.S. Savings Bonds

Criminal Resource Manual at 2226

Seizure of Airline Tickets

Criminal Resource Manual at 2227

9-111.700 International Seizures

See the Criminal Resource Manual at 2229 (International Seizures), 2230 (Policy on International Contacts), and 2231 (Importance of Reciprocal Cooperation).